

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ENCORE SERVICES, LLC,
ZACHARY BROOKE ROBERTS,
MARTIN GASPER MAZZARA, and
RICHARD LEE BROOME

Defendants.

GF-16-19-GF-BMM-JTJ

ORDER

I. Synopsis

The Chippewa Cree Tribe filed a motion to quash the subpoena duces tecum the Court issued on November 22, 2016, stating that (1) the Tribe's sovereign immunity relieved them from any requirement to respond to the subpoena and (2) the subpoena was oppressive and unreasonable. (Docs. 118, 98, 100.) Defendants opposed the motion. (Doc. 124.) The Court referred the Tribe's motion to the undersigned for disposition.

The undersigned held hearings on the Motion on January 17, 2017, and January 25, 2017. (Doc. 135.) The undersigned then ordered Defendants to submit a proposed amended subpoena. (Doc. 136.) Defendants filed the proposed amended subpoena on January 27, 2017. (Doc. 138.) The Tribe filed its response to the subpoena on February 3, 2017. (Doc. 143.) The undersigned held a status

conference on February 15, 2017. (Doc. 149.) During the status conference the Tribe agreed that the proposed amended subpoena was not unreasonable or oppressive because the Tribe had previously produced the documents the subpoena requests in a civil action to which it was a party. (4:14-cv-00063-BMM). Given this admission and the fact that the undersigned finds that the Tribe waived its sovereign immunity in this case by voluntarily producing documents to the United States in this case, the Tribe's motion is granted in part and denied in part.

II. Analysis

Rule 17(c)(2) of the Federal Rules of Criminal Procedure states that a court may quash a subpoena if "compliance would be unreasonable or oppressive." The Court finds that based on the Tribe's statement that it has previously produced all of the documents Defendants seek in their proposed amended subpoena, compliance with the proposed amended subpoena would not be oppressive or unreasonable. Thus, the Court may grant the Tribe's motion only if it finds that the Tribe has sovereign immunity in this matter.

Tribes have sovereign immunity due to their status as dependant domestic nations. *United States v. James*, 980 F.2d 1314, 1319 (9th Cir. 1992). A tribe maintains this immunity unless it unequivocally waives it or Congress abrogates it. *Id.* A tribe waives its sovereign immunity in regard to producing documents relevant to a case when it voluntarily provides documents to a party. *Id.*

Here, the Tribe voluntarily produced documents relevant to this case to the United States. Thus, the Court finds that the Tribe waived its sovereign immunity and must respond to a subpoena that seeks documents in its possession relevant to this case.

For the reasons stated above the Court issues the following order:

1. The Tribe's Motion to Quash is granted in part and denied in part.

2. The Tribe must respond to the Subpoena Duces Tecum to the extent described below:

The Tribe shall produce the following records:

I.

- A. Business committee/tribal council meeting minutes;
- B. Administration/administrative committee meeting minutes;
- C. Administration/administrative sub-committee meeting minutes;
- D. Administration/administrative Budget committee meeting minutes;
- E. Administration/administrative Budget Sub-committee meeting minutes;
- F. Budget committee meeting minutes;
- G. Budget Sub-committee meeting minutes;
- H. Executive committee meeting minutes;
- I. Administration/administrative committee meeting minutes;
- J. Executive session meeting minutes;
- K. Administration/administrative session meeting minutes
- L. Resolutions

for any Tribe entity or organization, including First American Capital Resources LLC (FACR) and/or Plain Green, LLC, which reference the following:

- 1. Encore Services, LLC;
- 2. Zachary Roberts;
- 3. Martin Mazzara;
- 4. Lee Broome;
- 5. Encore Service Corporation;
- 6. Ideal Consulting, LLC;
- 7. Trio Consulting, LLC;

8. Think Finance, Inc.;

9. Compensation to officers of Plain Green, FACR, Think Finance, the De

10. Settlement agreements between the tribe and Neal Rosette or Billi Anne Morsette ;

11. Severance agreements between the tribe and Neal Rosette or Billi Anne Morsette ;

The requested time period is during and between the years 2010 through 2013.

II.

Any records in its possession related to communications both, electronic and tangible, between Tribe members, including any business committee members/administrative members/executive committee members, which reference the above listed entities/individuals/items.

The requested time period is during and between the years 2010 through 2013.

Specifically, the Tribe shall produce any and all responsive communications, made to and from any email addresses, including:

1. Billi Anne Morsette: billianne@facrllc.com;
billianne@plaingreenllc.com; suzanne@cct.rockyboy.org

2. Neal Rosette, Sr.: neal@facrllc.com;
neal@plaingreenllc.com

3. Ted Russette, III (Board Member):
trussette@cct.rockyboy.org

4. Ted Demontiney (Board Member):
tdemontiney@cct.rockyboy.org; tdemontiney@yahoo.com

5. Richard "Rick" Morsette (Board Member):
morsette@cct.rockyboy.org ricky@cct.rockyboy.org

6. Chance Houle (Board Member):
johnchance@cct.rockyboy.org; johnchance@mail.rockyboy.org;
g; c_houle@cct.rockyboy.org; twrdchair@yahoo.com

7. Jake Parker (Board Member): jake@cct.rockyboy.org;
jake@mail.rockyboy.org;

8. Tony Belcourt (Board Member): tony@plaingreenllc.com;
tbelcourt@cct.rockyboy.org; tbelcourt@mail.rockyboy.org;
tbelcourt@hotmail.com

9. James Eastlick, Jr.: jeastlick@rbclinic.org;
jim@rbclinic.rockyboy.org; jseastlick@msn.com
10. Tim Rosette (Board Member): trosette@rbclinic.org
11. Bruce Sunchild (Board Member): bsunchild@yahoo.com
12. Dustin Whitford (Board Member):
dustinwhitford@yahoo.com
13. Theodore "Ted" Whitford (Board Member):
tedewhitford@hotmail.com
14. Joseph LaFromboise, Jr. (Board Member):
bearpawjoe@yahoo.com
15. Timothy McInerney (Board Member):
tim.mcinerney@fib.com; timbo.mcinerney@gmail.com
16. Bruce Sunchild (Board Member): bsunchild@yahoo.com
17. Donovan Stump (Board Member):
donovinstump@yahoo.com
18. Gerald Small (Board Member): gerald_small@yahoo.com
19. janice@cct.rockyboy.org
20. Richard Sangrey: richard@mail.rockyboy.org
21. Bobbi Favel (Accounting): bobbif@plaingreenllc.com
22. Kelly Ahenakew (Accounting): kelly@plaingreenllc.com
23. Marqueta Jilot (Accounting):
marqueta@plaingreenllc.com
24. Nicole LaMere (Accounting): nicolel@plaingreenllc.com
25. Neal Rosette, Jr.: nealjr@plaingreenllc.com
26. jennifer@plaingreenllc.com
27. Christine Jilot: chrisjilot@plaingreenllc.com
28. Clyde Brown: clydebrown@plaingreenllc.com
29. Harlen Baker: cree_talker@yahoo.com
30. Paul Pratt: ppratt@omatopia.com

31. Grady Reynolds: greynolds@barreymgmt.com
32. Linda Callnin: Think Finance, Inc.
lcallnin@thinkfinance.com
33. Virginia Chapa: Think Finance, Inc.
vchapa@thinkfinance.com
34. Sarah Cutrona: Think Finance, Inc.
scutrona@thinkfinance.com
35. K. Doherty: Think Finance, Inc.
kdoherty@thinkfinance.com
36. David Gentry: Think Finance, Inc.
dgentry@thinkfinance.com
37. Jason Harvison: Think Finance, Inc.
jharvison@thinkfinance.com
38. Chris Lutes: Think Finance, Inc.
clutes@thinkfinance.com
39. Angela McQuien: Think Finance, Inc.
amcquien@thinkfinance.com
40. Jay Dubow: Pepper Hamilton
dubowj@pepperlaw.com
41. Richard Eckman: Pepper Hamilton
eckmanr@pepperlaw.com
42. Derek E. Hines: Pepper Hamilton
hinesd@pepperlaw.com
43. Christina O. Hud: Pepper Hamilton
christinao@pepperlaw.com
44. Richard Zack: Pepper Hamilton
zackr@pepperlaw.com
45. Aaron D. Ford: Snell & Wilmer
aford@swlaw.com
46. Karl O. Riley: Snell & Wilmer
kriley@swlaw.com
47. Kevin S. Brown: Paoli and Brown
kevin@paolibrown.com

The Tribe does not need to produce communications that were sent directly to the Defendants.

3. The Tribe shall deliver copies of such records to counsel for the Defendants on or before February 24, 2017.
4. Defendants shall pay the costs of copying the documents responsive to the subpoena, not to exceed eight cents per page (\$0.08/page). In the alternative to copying costs, counsel for the Defendants can provide a USB or external drive to counsel for the Tribe and pay a fee of \$.04 per page scanned and uploaded to the drive.

DATED this 21st day of February 2017.



John Johnston
United States Magistrate Judge